Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte KENNETH D. CEOLA

Appeal No. 2003-0311
Application No. 09/538,785

ON BRIEF

Before COHEN, STAAB, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

REMAND TO THE EXAMINER

Regrettably, we must defer a decision on the merits in this appeal based upon the following.

1. On page 2 of the reply brief (Paper No. 9), appellant brings to our attention the circumstance that the examiner has failed to address the particular arguments set forth in the appeal brief (Paper No. 7). Clearly, in this appeal, the examiner's answer should have referenced and specifically answered the separate arguments appearing on 37 pages of the

appeal brief (pages 6 through 42). Instead, in the section of the answer denominated as "(11) Response to Argument", the examiner appears to have simply repeated, almost verbatim, the entire contents of the four final rejections found in Paper No. 5. The foregoing does not reference each argument on appeal and respond to same. We remand to obtain the examiner's technical rebuttal (answer) to the specific points of argument raised by appellant in the appeal brief, particularly relative to the limitations of independent apparatus claim 1 and method claim 10, and with specific reference being made by the examiner to portions of the specification and drawing figures of the applied prior art teaching(s) in support of the rebuttal, since the examiner's response (answer) is essential to the resolution of the anticipation and obviousness issues raised in this appeal.

2. The examiner should be aware that independent claims 1 and 10 refer to "the fuze" but do not positively recite same in the body of these claims. It is also not clear to us whether the examiner viewed the recitation in claim 1 of "a magnetic sensing apparatus for determining the occurrence . . ." as a means plus function limitation. Further, we point out that method claim 10, unlike apparatus claim 1, does not require arming of a fuze "upon

the occurrence" of the at least two events of step (a). Additionally, in the obviousness rejections of independent method claim 10, we do not discern the examiner's statement of differences between the claim and the Kurschner et al patent, only the indication is given that the method steps are "readily apparent during the operation of the device of Kurschner et al and Kurschner et al in view of Ziemba" (answer, page 7).

Appropriately, appellant should be given the opportunity to reply to the examiner's rebuttal of the briefed points of argument.

REMAND

IRWIN CHARLES COHEN)
Administrative Patent Judge)
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LAWRENCE J. STAAB) BOARD OF PATENT
Administrative Patent Judge) APPEALS
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JEFFREY V. NASE)
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